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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,847	01/05/2001	David Funk	41468/DBP/C664	3701
23363	7590	03/11/2004	EXAMINER	
CHRISTIE, PARKER & HALE, LLP 350 WEST COLORADO BOULEVARD SUITE 500 PASADENA, CA 91105			BRANCOLINI, JOHN R	
			ART UNIT	PAPER NUMBER
			2153	8
DATE MAILED: 03/11/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/755,847	FUNK, DAVID
	<b>Examiner</b>	<b>Art Unit</b>
	John R Brancolini	2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 January 2001.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) 3,9,16 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 05 January 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

Claims 1-17 are pending in the application.

### ***Priority***

No claim for priority has been made. The effective filing date is January 5, 2001.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on June 6, 2001 was filed after the mailing date of the application on January 5, 2001. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

The information disclosure statement (IDS) submitted on October 28, 2002 was filed after the mailing date of the application on January 5, 2001. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description:  
In Figure 4, items 400, 402, 404, 406, 408, 410, 412, 414, 416, 418.

A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claims 3, 9, 16 are objected to because of the following informalities:  
“One or more of the group of” should be stated “one or more of the group consisting of”. Markush groups must be stated using “consisting of” language. See MPEP 2173.05 (h).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5-9, 11-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Combar et al. (US Patent 6470386), hereinafter referred to as Combar.

In regards to claim 1, Combar discloses an optical network arranged in a manner such that in use at least one management function in the optical network is being affected utilising standard TCP/IP communication protocols (a user management session is verified and forwarded by a server utilizing standard TCP/IP communication protocols, col 6 lines 22-40).

In regards to claim 2, Combar discloses the optical network is arranged in a manner such that, in use, the management function is being affected on a computer located within a network element of the optical network (Fig 2 shows a customer using a personal computer to access the management function, the computer being a network element of the telecommunication [optical] network, see also col 4 lines 4-28).

In regards to claim 3, Combar discloses the management function comprises the distribution of one or more of the group of alarm reports, audit logs, alarm logs, and status reports (the customer can easily access status reports, Fig 12c, see also col 1 lines 63-67)

In regards to claim 5, Combar discloses the optical network may be arranged in a manner such that, in use, the management function is being effected via an HTTP server incorporated in the network element and accessible via a conventional web browser (Fig 2 shows an outline of the telecommunications network, with items 24 [two

Art Unit: 2153

HTTP web servers] and item 20[a personal computer with a web browser], see also col 5 lines 44-57, col 6 lines 2-5).

In regards to claim 6, Combar discloses the network element comprises a network node or an in-line amplifier (Fig 2 shows the network element for controlling the management function is a personal computer acting as a network node).

In regards to claim 7, Combar discloses a method of managing an optical network, the method comprising the step of effecting at least one management function of the optical network utilising standard TCP/IP communications protocols (a user management session is verified and forwarded by a server utilizing standard TCP/IP communication protocols, col 6 lines 22-40).

In regards to claim 8, Combar discloses the management function is being affected on a computer located within a network element of the optical network (Fig 2 shows a customer using a personal computer to access the management function, the computer being a network element of the telecommunication [optical] network, see also col 4 lines 4-28).

In regards to claim 9, Combar discloses the management function comprises the distribution of one or more of the group of alarm reports, audit logs, alarm logs, and

Art Unit: 2153

status reports (the customer can easily access status reports, Fig 12c, see also col 1 lines 63-67).

In regards to claim 11, Combar discloses the management function is being affected via an HTTP server incorporated in the network element and accessible via a conventional web browser (Fig 2 shows an outline of the telecommunications network, with items 24 [two HTTP web servers] and item 20[a personal computer with a web browser], see also col 5 lines 44-57, col 6 lines 2-5).

In regards to claim 12, Combar discloses the network element may comprise a network node or an in-line amplifier (Fig 2 shows the network element for controlling the management function is a personal computer acting as a network node).

In regards to claim 13, Combar discloses a network element for use in an optical network, the network element comprising means for, in use, communicating using standard TCP/IP protocols to effect at least one management function in relation to the network element (a user management session is verified and forwarded by a server, or an element in the telecommunications [optical] network, utilizing standard TCP/IP communication protocols, col 6 lines 22-40).

In regards to claim 14, Combar discloses the means for communicating comprises an SMTP server application (SMTP can be enabled to the In-Box server, col 8 liens 57-64).

In regards to claim 15, Combar discloses the means for communicating may comprise an HTTP server application (Fig 2 shows an outline of the telecommunications network, with items 24 [two HTTP web servers], see also col 5 lines 44-57, col 6 lines 2-5).

In regards to claim 16, Combar discloses the management function comprises the distribution of one or more of the group of alarm reports, audit logs, alarm logs, and status reports (the customer can easily access status reports, Fig 12c, see also col 1 lines 63-67).

In regards to claim 17, Combar discloses the network element is in the form of a network node or an in-line amplifier (Fig 2 shows the network element for controlling the management function is a personal computer acting as a network node).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 2153

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4,10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Combar in view of Martenson (US Patent 6219708).

In regards to claims 4 and 10, Combar discloses an In-box server that acts as a store and forward for client designated reports, but never directly discloses the management function is being affected by the use of e-mail.

Martenson discloses a system for network resource management utilizing a network module, or element, having an instruction module that is used to translate management instructions for the network. In the Martenson system, the feature of using e-mail to affect the management function is shown where the system utilizes email to distribute system reports and fault summaries (col 16 lines 44-63). By using e-mail for directly contacting technical support, the management function is directly affected through the resulting response by the technical support. Martenson teaches this is beneficial as it both gets the customer back on-line quickly and captures vital information about the error conditions (col 16 lines 61-63).

It would have been obvious to one of ordinary skill in the art at the time of invention to modify Combar to include having the management function is being affected by the use of e-mail as taught by Martenson to allow both getting the customer back on-line quickly and capturing vital information about the error conditions.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Henderson et al. (US Patent 6058103), a system for telecommunication network management utilizing a remote network element with a loaded browser for optical network management.
- Henderson et al. (US Patent 6259679), an update to the system mentioned above.
- Scholl et al. (US Patent 5742762), a system of network management utilizing a web browser located at a remote network element.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John R Brancolini whose telephone number is (703) 305-7107. The examiner can normally be reached on M-Th 7am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on (703) 305-4792. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2153

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JRB



FRANTZ B. JEAN  
PRIMARY EXAMINER